93-

No. 92-1924

(2)

Supreme Court, U.S.
FILED
JUN 30 1994
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

HERMAN E. MITCHELL,

Petitioner,

—v.—

ALLSTATE LIFE INSURANCE COMPANY and
METROPOLITAN LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF OF METROPOLITAN LIFE INSURANCE COMPANY IN OPPOSITION

DAVID J. LARKIN, JR.
Counsel of Record
One Madison Avenue
New York, New York 10010
(212) 578-2944

Counsel for Respondent
Metropolitan Life Insurance Co.

12pp

QUESTION PRESENTED

1. Did the absence of medical evidence support a denial of petitioner's application for "total disability benefits" under his employee welfare benefit plan?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE..... 2

REASONS THE PETITION SHOULD BE DENIED .. 2

I. NO REASON FOR GRANTING THE PETITION IS STATED; THE PETITION SHOULD THEREFORE BE DENIED..... 2

II. BECAUSE PETITIONER RAISES ONLY A FACTUAL QUESTION, NO "SPECIAL" OR "IMPORTANT" REASON EXISTS FOR GRANTING THE WRIT. 2

CONCLUSION..... 4

APPENDIX—

LIST NAMING ALL PARENT COMPANIES AND NON-WHOLLY-OWNED SUBSIDIARIES OF RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY 1a

TABLE OF AUTHORITIES

Cases PAGE

United States Supreme Court
Rule 10 ..... 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

No. 94-1924

HERMAN E. MITCHELL,

Petitioner,

—v.—

ALLSTATE LIFE INSURANCE COMPANY and
METROPOLITAN LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF OF METROPOLITAN LIFE INSURANCE COMPANY IN OPPOSITION

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the petition for a writ of *certiorari*, seeking review of a judgment of the United States Court of Appeals for the Fifth Circuit. The summary affirmance of the Court of Appeals is reported at 13 F.3d 937 (5th Cir. 1994).

STATEMENT OF THE CASE

Petitioner, Herman E. Mitchell, a former employee of the Herring Marathon Group Inc., participated in Herring's employee welfare benefit plan. A-5.[1] He applied for the plan's "total disability" benefit after his job was eliminated in a company buy-out, based on an alleged injury which occurred two years earlier. A-5. His application was denied. A-6. The instant proceedings ensured.

REASONS WHY THE PETITION SHOULD BE DENIED

I. NO REASON FOR GRANTING THE PETITION IS STATED; HENCE, IT SHOULD BE DENIED.

Rule 10 of this Court permits the discretionary writ of *certiorari* to be granted "*only* when there are special and important reasons therefor." (Emphasis added). The present petition fails to state any reason for granting the writ; hence, the petition should be denied.

II. BECAUSE PETITIONER RAISES ONLY A FACTUAL QUESTION, NO "SPECIAL" OR "IMPORTANT" REASON EXISTS FOR GRANTING THE WRIT.

Even assuming that petitioner's appellate-style brief can be construed as stating a reason for granting the writ, that "reason" is misstated by petitioner. Essentially, petitioner raises only a question of fact, quibbling over whether the "medical evidence" (or lack thereof) which he produced in support of his claim demonstrated a "total disability." *See* A-7-A-8 (finding that petitioner produced no medical evidence of total disability). A mere factual dispute presents neither the type of

---

[1] All "A." references are to the Appendix of the petition for a writ of *certiorari*

"special" nor "important" question which Rule 10 anticipates this Court resolving. Nor would further review of the facts advance petitioner's cause. So glaring is the absence of medical evidence to support petitioner's claim that during oral argument, the Fifth Circuit, reading from the bench, asked counsel for petitioner to respond to the following paragraph from MetLife's brief:

> **There is no "reasonable" construction of "Total Disability" which can embrace the medical condition of this plaintiff, who—according to his long-time treating physician—is not and never has been totally disabled, who continued to work, without time loss, for more than two years after his allegedly disabling incident, who did not require the regular care of a physician for his alleged disability, and who has conceded that he ceased to work not for any medical reason but because he was "bought out" in a company takeover.**

Brief of Appellee Metropolitan Life at 20. Based on counsel's response (or lack thereof), the Fifth Circuit summarily affirmed the judgment of the district court. This Court should similarly deny the present petition.

CONCLUSION

Petitioner has stated no reason for granting the writ. Moreover, the question he raises is really a question of fact, not properly addressed by this Court. The judgment of the Court of Appeals should therefore be affirmed.

Respectfully submitted,

DAVID J. LARKIN, JR.
Counsel of Record
One Madison Avenue
New York, New York 10010
(212) 578-2944

Counsel for Respondent
Metropolitan Life Insurance Co.

Dated: New York, New York
June 30, 1994

APPENDIX

APPENDIX

LIST NAMING ALL PARENT COMPANIES AND NON-WHOLLY-OWNED SUBSIDIARIES OF RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY

ALBANY GENERAL INSURANCE COMPANY LIMITED
AMI PARTNERS INC.
ANTHONY'S ACQUISITION CORP.
ANTHONY'S MANUFACTURING CO., INC.
AVONDALE INCORPORATED
AVONDALE MILLS, INC.
BANCO DE COMERCIO E INDUSTRIA
BLODGETT HOLDINGS, INC.
BRAELAN CORP.
BRIGGS PLUMBING PRODUCTS, INC.
CHART HOUSE ENTERPRISES, INC.
CICERO/CERMAK CORPORATION
CLOVER LEAF, INC.
CP&S COMMUNICATIONS, INC.
CRYSTAL OIL COMPANY
DAN RIVER INC.
ECLIPSE CLAIM SERVICES INC.
FB BRIGGS, INC.
FEDERAL STREET FINANCIAL ADVISERS, INC.
GENESIS SEGUROS GENERALES, SOCIEDAD ANONIMA DE SEGUROS Y REASEGUROS
GRANT TENSOR GEOPHYSICAL CORP.
GS BLODGETT CORPORATION
GS BLODGETT INC.
GS BLODGETT INTERNATIONAL LTD.
HERONFIELD APARTMENTS LIMITED PARTNERSHIP
IGLOO HOLDINGS, INC.
IGLOO PRODUCTS CORPORATION
INMOBILIARIA HOLSANT, S.A.
INTERBROKER, CORREDURIA DE REASEGUROS, S.A.,
INTERSTATE BAKERIES CORPORATION

INTERSTATE BRANDS CORPORATION
KOLON-MET LIFE INSURANCE COMPANY
LINCOLN GROUP HOLDING CORP.
LUTHER'S BAR-B-Q, INC.
MAGIKITCH'N, INC.
MANAGEMENT AND RISK INSTITUTE, INC.
MECCO HOLDING, INC.
MEDICAL IMAGING CENTER OF AMERICA, INC.
MET LIFE INTERNATIONAL REAL ESTATE EQUITY SHARES, INC.
METLIFE AGRICULTURAL CREDIT CORP.
METLIFE FUNDING II, INC.
METLIFE INDEPENDENT FINANCIAL SERVICES LIMITED
METPARK FUNDING, INC.
METRIC INCOME TRUST SERIES, INC.
METRIC INSTITUTIONAL APARTMENT FUND, L.P.
METRIC INSTITUTIONAL APARTMENT FUND II, L.P.
METRIC PARTNERS GROWTH SUITE INVESTORS, L.P.
METRIC REAL ESTATE, L.P.
METROPOLITAN HOME LOANS LIMITED
METROPOLITAN LIFE FOUNDATION
METROPOLITAN LIFE INSURANCE SERVICES LIMITED
METROPOLITAN LLOYDS INSURANCE COMPANY OF TEXAS
METROPOLITAN PLAN MANAGERS LIMITED
METROPOLITAN SERIES FUND, INC.
METROPOLITAN STRUCTURES, INC.
METROPOLITAN STRUCTURES WEST, INC.
MEZZANINE INVESTMENT LIMITED PARTNERSHIP-2
MEZZANINE INVESTMENT LIMITED PARTNERSHIP-6
MEZZANINE INVESTMENT LIMITED PARTNERSHIP-10
MIAF INC. II
MR, INC.
NATIONAL ELECTRONIC INFORMATION CORPORATION
PARK COMMUNICATIONS, INC.
PETERSBURG LONG DISTANCE, INC.

PITCO FRIALATOR, INC.
QUADREAL CORP.
RALPH C. SUTRO, INC.
RB&W CORPORATION
SANTANDER MET, S.A.
SEGUROS GENESIS, S.A. (MEXICO)
SEGUROS GENESIS, S.A. (SPAIN)
SOUTHERN HEALTH PLAN MANAGEMENT, INC.
SSRM SERVICES, INC.
TESORO PETROLEUM CORPORATION
THE GREATER NORTHEAST REAL ESTATE, INC.
TRC ACQUISITION d/b/a THE REGINA COMPANY